

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0365-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CARLOS RAFAEL MENDOZA,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause Nos. CR200301029 and CR200400305 (Consolidated)

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Edward G. Rheinheimer, Cochise County Attorney
By James Glanville

Bisbee
Attorneys for Respondent

Carlos R. Mendoza

Florence
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Following a jury trial, petitioner Carlos Mendoza was convicted of first-degree murder, kidnapping, and tampering with physical evidence. The trial court sentenced him to a combination of consecutive and concurrent prison terms totaling 32.5 years. We affirmed Mendoza’s convictions and sentences on appeal.¹ *State v. Mendoza*, Nos. 2 CA-CR 2004-0253, 2 CA-CR 2004-0254 (consolidated) (memorandum decision filed Apr. 12, 2007).

¶2 Counsel filed a petition for post-conviction relief “pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967),” claiming she had reviewed the record and could “find no issues for review.” *See* Ariz. R. Crim. P. 32. At the outset, we question the propriety of *Anders* review here. We note that, in 2000, the Supreme Court of Arizona amended Rule 32.4(c) in accordance with *State v. Smith*, 184 Ariz. 456, 910 P.2d 1 (1996), and *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614, *supp. op.*, 182 Ariz. 118, 893 P.2d 1281 (1995), to clarify that an *Anders*-type proceeding applies strictly to Rule 32 of-right proceedings as defined in Rule 32.1. 198 Ariz. CXV (2000). Nonetheless, counsel asked that Mendoza be given the opportunity to file a pro se petition, which the trial court granted. Thereafter, Mendoza filed a pro se petition in which he raised claims of ineffective assistance of counsel and prosecutorial misconduct. This petition for review followed the trial court’s summary dismissal of that petition. “We will not disturb a trial court’s ruling on a petition

¹Although we noted the sentence imposed on the murder conviction was not authorized under A.R.S. § 13-703, because the state had failed to raise that issue below or by cross-appeal, we concluded we had no jurisdiction to correct the unlawfully lenient sentence. *State v. Mendoza*, Nos. 2 CA-CR 2004-0253, 2 CA-CR 2004-0254, n.1 (consolidated) (memorandum decision filed Apr. 12, 2007).

for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶3 Mendoza argues the trial court abused its discretion by denying relief on the following claims: (1) appellate counsel were ineffective for having failed to present Mendoza’s claims in a manner that would permit him to later file a federal habeas corpus petition; (2) the prosecutor failed to comply with required disclosure obligations; and (3) “[s]tate rules were applied in a way which denied Petitioner his rights to present a complete defense and effective assistance of counsel in violation of Petitioner[’]s 5th, 6th and 14th amendment rights under the U.S. Constitution.”

¶4 In its minute entry denying Mendoza relief, the trial court found the claim of prosecutorial misconduct was precluded, *see* Rule 32.2(a), and that the two claims of ineffective assistance of counsel lacked merit. In order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel’s performance fell below an objectively reasonable professional standard and that the deficient performance caused prejudice to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). The trial court denied relief in a detailed and thorough minute entry order that clearly identified Mendoza’s arguments and correctly ruled on them in a manner that will allow this court and any future court to understand its resolution. We therefore adopt the trial court’s ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 Because we conclude the trial court did not abuse its discretion by dismissing Mendoza’s petition for post-conviction relief, we grant the petition for review but deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge